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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on Arbitrary Detention

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Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights at its forty-seventh session, in 1991, by resolution 1991/42. The Working Group's initial three-year mandate was extended by the Commission in 1994 for a further three years. Under the terms of resolution 1991/42 the Commission decided to create a working group composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant legal instruments adopted by the States concerned. The Working Group consists of the following five independent experts: Mr. L. Joinet (France) - Chairman-Rapporteur; Mr. R. Garretón (Chile) - Vice-Chairman; Mr. L. Kama (Senegal); Mr. K. Sibal (India) and Mr. P. Uhl (Slovakia). The Group has so far submitted four reports to the Commission, covering the period 1992-1995 (docs. E/CN.4/1992/20, E/CN.4/1993/24, E/CN.4/1994/27 and E/CN.4/1995/31 and Add.1-4, respectively).

2. At its fifty-first session, the Commission on Human Rights adopted resolution 1995/59, entitled "Question of arbitrary detention", in which it requested the Working Group to submit a report to the Commission, at its fifty-second session, and to make any suggestions and recommendations which would enable it to discharge its task in the best possible way, in cooperation with Governments, and to continue its consultations to that end within the framework of its terms of reference.

3. In conformity with paragraph 18 of resolution 1995/59, the Working Group hereby presents its fifth report to the Commission.

4. Chapter I of the report describes the activities of the Working Group since the submission of its fourth report to the Commission, including data on the number of communications and cases transmitted by the Working Group to Governments during 1995 and the number of replies received, data on urgent appeals sent and the replies received thereto, contacts made by the Working Group with certain Governments with a view to carrying out field missions, and contacts made by the Working Group with other United Nations bodies, other human rights mechanisms and non-governmental organizations. Chapter II describes the general framework in which the Working Group adopted decisions on individual cases submitted to it, a table containing data on the decisions adopted by the Working Group during 1995 and the reactions of some Governments to decisions adopted concerning them. Chapter III contains the Working Group's observations regarding some criticisms made of it at the most recent session of the Commission on Human Rights, while Chapter IV contains the Working Group's general conclusions and recommendations.

5. The present report also contains two annexes: annex I, which, taking account of experience acquired, describes the revised methods of work of the Working Group, and annex II, which contains statistical data regarding the number of cases dealt with by the Working Group during the period covered by the present report and the breakdown of the types of decisions adopted by the

Working Group. The decisions adopted by the Working Group at its November 1994 session and its May 1995 session, as well as 13 of the decisions which it adopted at its September 1995 session, are contained in document E/CN.4/1996/40/Add.1.

I. ACTIVITIES OF THE WORKING GROUP

6. The present report, at the time of drafting, describes activities in the period from January to December 1995. During that period the Working Group held its twelfth, thirteenth and fourteenth sessions.

7. The Working Group wishes to point out that, in a spirit of cooperation with the Secretariat, which is facing budgetary difficulties, it agreed that two days (29 and 30 May) initially assigned to its May 1995 session should be transferred to the meeting of the special rapporteurs and chairpersons of working groups of the Commission.

A. Communications with Governments

8. During the period under consideration, the Working Group transmitted 37 communications containing 829 new cases of alleged arbitrary detention (17 women and 812 men) concerning the following countries (the number of individuals concerned is given in parentheses): Azerbaijan (2), Bahrain (534), Canada (1), China (63), Colombia (9), Cuba (4), Democratic People's Republic of Korea (2), Egypt (12), Ethiopia (1), Indonesia (13), Iran (Islamic Republic of) (2), Israel (6), Libyan Arab Jamahiriya (1), Maldives (2), Morocco (5), Nepal (1), Nigeria (26), Pakistan (6), Peru (10), Republic of Korea (3), Saudi Arabia (10), Sudan (19), Tunisia (4), Turkey (11), Viet Nam (2) and Zaire (6), as well as the Palestinian Authority (6).

9. In addition to these communications, the Working Group transmitted a communication to the Government of Rwanda concerning the massive detentions reported in that country.

10. Out of the 28 Governments concerned, 14 provided the Working Group with information regarding all or some of the cases transmitted to them. They were the Governments of the following countries: Azerbaijan, Bahrain, Canada, Colombia, Cuba, Democratic People's Republic of Korea, Ethiopia, Indonesia, Nepal, Peru, Republic of Korea, Saudi Arabia, Sudan and Viet Nam.

11. The Governments of Egypt, the Islamic Republic of Iran, Israel, the Libyan Arab Jamahiriya, Maldives, Pakistan, Rwanda, Turkey and Zaire, and the Palestinian Authority, did not provide the Working Group with any reply concerning the cases submitted to them during the period February-July 1995. With regard to the other Governments (cf. para. 7 above), the 90-day deadline laid down in the Working Group's methods of work had not yet expired at the time the present report was finalized.

12. In respect of communications transmitted prior to the period January-December 1995, the Working Group received replies from the Governments of Mexico, Peru and Sri Lanka.

13. A description of the cases transmitted and the contents of the Governments' replies are contained in the relevant decisions adopted by the Working Group (see E/CN.4/1996/40/Add.1).

14. As regards the sources which reported alleged cases of arbitrary detention to the Working Group, it may be noted that of the 829 individual cases sent by the Working Group to Governments during the period under consideration, 11 were based on information submitted by family members or relatives of the detained persons, 694 were based on information submitted by local or regional non-governmental organizations and 124 were based on information provided by international non-governmental organizations in consultative status with the Economic and Social Council.

15. In one case, that of Rwanda, the Working Group had recourse to its power to take up cases on its own initiative, as it was authorized to do by the Commission on Human Rights in resolution 1993/36 (para. 4), by requesting the Special Rapporteur on the situation of human rights in Rwanda to provide it with information on the question of detention in that country (see para. 9 above and para. 119 below).

B. Urgent appeals

16. During the period under consideration the Working Group transmitted 62 urgent appeals to 38 Governments (the number of persons concerned by these appeals is given between parentheses). Five appeals were addressed to the Government of China (10); four appeals were transmitted to the Governments of Myanmar (19) and Nigeria (16); three appeals were transmitted to the Governments of Bahrain (4), Bangladesh (15), Turkey (7) and Viet Nam (4); two appeals were sent to the Governments of Bhutan (2), Cuba (8), Ethiopia (4) Pakistan (2), the Syrian Arab Republic (3) and Tunisia (2), and one appeal was sent to the Governments of Albania (1), Azerbaijan (2), Colombia (4), Costa Rica (7), Croatia (1), Ecuador (1), Guatemala (1), Honduras (many cases of minors detained with adults), India (1), Kazakstan (1), Kenya (6), Kuwait (34), Lao People's Democratic Republic (1), Maldives (3), Morocco (8), Nepal (11), Panama (12), Peru (1), Republic of Korea (1), Russian Federation (1), Rwanda (1), Sudan (3), Thailand (1), United Kingdom of Great Britain and Northern Ireland (1) and Venezuela (7).

17. In addition to the communications mentioned above, the Working Group addressed urgent appeals jointly with other thematic and/or country special rapporteurs to the following Governments: Israel (concerning the situation of 260 persons detained in southern Lebanon), Turkey (concerning the situation of civilians in the north of Iraq) and Sudan (concerning demonstrations which were reportedly followed by numerous arrests).

18. In conformity with paragraph 11 (a) of its revised methods of work (see annex I), the Working Group, without in any way prejudging the final assessment of whether the detention was arbitrary or not, drew the attention of each of the Governments concerned to the specific case as reported and appealed to it to take the necessary measures to ensure that the detained persons' rights to life and to physical integrity were respected. In some cases, in view of the critical state of health in which the detained persons

were reported to be, or in view of other particular circumstances, such as the failure to execute a court order for the release of a detained person, the Working Group also appealed to the Government concerned to consider releasing the persons without delay.

19. The following Governments provided the Working Group with information on the situation of some or all of the persons concerned: Bahrain, Bhutan, China, Cuba, Ecuador, Egypt, Ethiopia, Guatemala, Honduras, India, Kazakstan, Kuwait, Maldives, Morocco, Myanmar, Nepal, Nigeria, Panama, Peru, Sudan, Thailand, Tunisia, Turkey, United Kingdom and Viet Nam. The Governments of Israel and Turkey replied to the urgent appeals that the Working Group had addressed to them jointly with other Special Rapporteurs. In some of the cases, the Working Group was informed, either by the Government or by the source, that the persons concerned had been released from detention. Such releases were reported in Bahrain, Bhutan, China, Ecuador, Guatemala, India, Peru, Sudan, Thailand, Tunisia and Turkey. The Working Group wishes to thank those Governments which heeded its appeal to provide it with information on the situation of the persons concerned, and in particular the Governments which released such persons.

C. Field missions

20. Colombia. On 28 February, during the proceedings of the fifty-first session of the Commission, the Ambassador of Colombia sent a letter to the head of the Special Procedures Branch of the Centre for Human Rights, in which he invited various special rapporteurs and working groups of the Commission to undertake missions to Colombia.

21. In this connection, the Deputy Minister for Foreign Affairs sent out invitations on 18 April, among others to the Chairman of the Working Group on Arbitrary Detention, expressing his readiness to receive him in May. However, owing to the proximity of the date, as well as to the fact that the arrangement had not been previously agreed with the Working Group - which had not met since the fifty-first session of the Commission and had therefore not been informed of the Government's commitment - the mission could not be carried out.

22. During the annual meeting of special rapporteurs and chairpersons of working groups of the special procedures, held in Geneva on 29 and 30 May, the participants (Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on extrajudicial, summary or arbitrary executions, Representative of the Secretary-General on internally displaced persons, Chairman of the Working Group on Arbitrary Detention, and Chairman of the Working Group on Enforced or Involuntary Disappearances) agreed, as a matter of priority, to request the Government to provide detailed information on the measures taken to implement the recommendations made as a result of previous visits, in particular the recommendation made jointly in 1994 by the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1995/111) - and the Representative of the Secretary-General on internally displaced persons - and on the difficulties that the present Government may have encountered in following up those recommendations. Once

the contents of the Government's reply had been analysed, the Special Rapporteurs would decide on the possibility of undertaking a visit jointly or separately. This decision was communicated to the Government on 31 May by the Centre for Human Rights in a note verbale.

23. At the time the present report was being drafted, the Working Group had not received the information requested, so that the visit proposed by the Government of Colombia has not yet taken place.

24. Indonesia. The Working Group put forward three reasons for requesting the Government of Indonesia to extend an invitation to it.

25. The first reason, of a more general nature, is that the resolutions of the Commission on Human Rights relating to the question of arbitrary detention (resolutions 1993/36; 1994/32 and 1995/59), as well as those relating to human rights and thematic procedures (resolutions 1993/47; 1994/53 and 1995/87), urged Governments to invite those responsible for the special procedures of the Commission.

26. Secondly - and this specifically concerns Indonesia - in the statements made by the Chairmen of the forty-eighth, fiftieth and fifty-first sessions of the Commission, as well as in Commission resolution 1993/97, which all relate to the situation of human rights in East Timor, the Government was urged to invite special rapporteurs and working groups so that they could discharge their mandates.

27. Thirdly, the Working Group submitting this report decided in its Interim Decision No. 34/1994 concerning Xanana Gusmao that it could not adopt a definitive decision without a prior visit to Indonesia and East Timor, of which it duly informed the Government.

28. Accordingly, the Working Group once again contacted the Government of Indonesia on 8 June 1995, requesting it to extend an invitation which it considered necessary for the discharge of its mandate.

29. The Government, in a letter dated 1 September 1995, reaffirmed its undertaking to cooperate with the special rapporteurs and working groups, adding that "in this connection, the Government of Indonesia has decided to invite Mr. José Ayala-Lasso, the United Nations High Commissioner for Human Rights, to visit Indonesia, including the province of East Timor, within the framework of the implementation of the consensus Chairman's Statement of the [fifty-first] session of the CDH".

30. The Working Group transmitted this reply to the High Commissioner and requested him, in the course of the visit that he would be making to the country at the Government's invitation, to stress the need for an invitation to be extended to the Working Group, as requested. At the time of drafting this report, no such invitation had been received.

31. Cuba. In its report for 1994, the Working Group stated that, as a rule, thematic special rapporteurs and working groups should not make visits to countries for which a special mechanism has been designated, "other than at

the request, or at any rate with the consent", of the Special Rapporteur for that country (E/CN.4/1995/31, para. 22 (a)). Consequently, the Working Group had not planned to visit Cuba, despite the request made by the Commission in resolution 1994/71, paragraph 8.

32. On 28 February 1995 the Special Rapporteur on the situation of human rights in Cuba, Mr. C.J. Groth, faced with that Government's lack of cooperation, requested the Working Group to ask for an invitation to that country. A similar request was also made to the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on freedom of opinion and expression.

33. After the annual meeting of special rapporteurs and chairpersons of working groups, the three above-mentioned special rapporteurs separately conferred with the High Commissioner for Human Rights, and, since he had already discussed with the various Cuban authorities the advisability of cooperation by the Government with the United Nations organs, bodies and mechanisms acting in the field of human rights (Report of the United Nations High Commissioner for Human Rights, E/CN.4/1995/98, para. 25), requested him to intervene so that missions could be undertaken to the country. The High Commissioner sent a note to this effect to the Government of Cuba on 12 June 1995.

34. By the time this report was drafted, no invitation had been sent to the Working Group.

35. Peru. Several non-governmental organizations contacted the Working Group with the request that it undertake a mission to that country. The Working Group received this request with interest, particularly in view of the fact that many of the cases of alleged arbitrary detention submitted to it have had to be left pending for want of more complete information. In many of the cases the lack of information stems from the complexity of the laws, which are constantly being amended and which often do not seem to be in conformity with international standards relating to due process of law. In this connection, the Vice-Chairman of the Working Group held discussions with the Permanent Representative of Peru in Geneva, and on 13 November 1995 the Chairman of the Working Group formally requested an invitation to the country. No reply has been received to date.

36. Bhutan and Viet Nam. Following the missions undertaken by the Working Group to Bhutan and Viet Nam in October 1994 (see E/CN.4/1995/31, para. 15 and E/CN.4/1995/31/Add.3 and Add.4), the Working Group informed the two Governments concerned of its wish to carry out a follow-up visit, in connection with the implementation of the recommendations made by the Working Group and with a view to visiting certain places of detention which it had been unable to visit in the course of its first visit.

37. In the case of Bhutan, the Bhutanese authorities invited the Working Group to return six months after the first visit, but the Working Group decided, for reasons connected with its timetable of work, to undertake the follow-up visit to Bhutan in the spring of 1996.

38. As for a follow-up visit to Viet Nam, the Chairman of the Working Group had several contacts on this subject with the Vietnamese authorities and reiterated the Working Group's request for such a visit in a letter dated 22 September 1995. The Vietnamese authorities replied in a letter dated 23 November 1995 that "the Vietnamese Government is in principle favourable to the idea of another visit by the Working Group to Viet Nam", but that owing to several important events planned for 1996 in Viet Nam, that visit might have to take place at a later date.

39. Nepal. In connection with the follow-up visit to Bhutan, the Working Group contacted the Nepalese authorities with a view to going to Nepal in order to visit the Bhutanese refugee camps in the east of the country and, on the same occasion, to undertake a visit within the country under the terms of its mandate. The initial response to this request was positive, subject to a formal invitation being sent to the Working Group by the Nepalese Government.

40. United States of America (Guantanamo Naval Base). Following an approach by the Working Group to the authorities of the United States of America, the Government of that country invited the Working Group to visit the Guantanamo Naval Base in order to investigate the legal status of the Cuban asylum seekers who were there (see E/CN.4/1995/31, para. 17). The Working Group decided to go there in October 1995 and, on the same occasion, to contact officials in Washington in order to discuss matters concerning immigration and asylum seekers. However, on account of the financial crisis affecting the United Nations and the temporary freeze on missions, the Working Group was unable, to its great regret, to carry out the visit at the time planned. Meanwhile, the source which had brought the situation in Guantanamo to the attention of the Working Group informed the Group that all the asylum seekers - both Haitians and Cubans - at the Guantanamo Naval Base were to be allowed to settle in the United States by the end of January 1996. In the light of this information, the source suggested that the Working Group should maintain the principle of undertaking a visit, pending such a positive outcome.

41. China. As regards the request made by the Working Group to the Chinese authorities for an invitation to visit that country (see E/CN.4/1995/31, para. 18), the Chairman of the Working Group took up the matter again in a letter dated 22 September 1995. Following contacts that took place in Geneva in November 1995 between the Chairman of the Working Group and a senior official for the Ministry for Foreign Affairs of China, the Chinese authorities indicated their intention to invite the Group to visit China in 1996.

42. Russian Federation. With regard to the request made by the Working Group to the Government of the Russian Federation to facilitate a visit to labour camps situated in the Russian Far East, operated by the Democratic People's Republic of Korea (see E/CN.4/1995/31, para. 16), no reply has yet been received.

D. Cooperation with the Commission on Human Rights

43. The Working Group attaches particular importance to all resolutions of the Commission on Human Rights, as will be apparent from its reports E/CN.4/1995/31, E/CN.4/1994/27 and E/CN.4/1993/24. The following resolutions of the Commission were the object of the Working Group's particular attention.

44. Resolution 1995/59 concerning the question of arbitrary detention and resolution 1995/87 concerning human rights and thematic procedures. These resolutions deal with several subjects that are covered in other chapters of this report, such as visits to countries, follow-up missions, cooperation with non-governmental organizations and data broken down according to sex. In this part, the Working Group wishes to mention several aspects connected with resolution 1995/59 on the question of arbitrary detention and its own mandate.

1. Coordination with thematic or country special rapporteurs and working groups

45. In its fourth report (E/CN.4/1995/31), the Working Group made various proposals to the Commission:

(a) That visits to countries already handled by the Commission through its thematic mechanisms should be carried out only at the request, or at any rate with the consent, of the respective country special rapporteur;

(b) That machinery be established in the Centre for Human Rights for coordinating requests for visits under all special procedures. It was recommended that coordination should include the missions of the High Commissioner;

(c) That a system be established for visits to follow up recommendations made in the reports of missions carried out under special procedures.

46. The Commission took note, in resolution 1995/59, paragraph 5, of the importance that the Working Group attached to coordination with other mechanisms of the Commission and to the strengthening of the role of the Centre for Human Rights in such coordination, and encouraged it to avoid unnecessary duplication. Thus, it is the understanding of the Working Group that its proposals have been accepted by the Commission, principally with regard to follow-up visits, which are of special interest to the Commission (resolution 1995/87, para. 2).

47. The Working Group, on learning of cases of alleged arbitrary detention, considered it advisable to bring the facts to the attention of the Special Rapporteur on the question of torture (15 cases) and the Special Rapporteur on freedom of opinion and expression (41 cases).

48. Similarly, the Working Group received reports from several country special rapporteurs of cases of arbitrary detention that had occurred in the countries for which they were responsible.

49. In a desire to coordinate its activities more effectively with those of other mechanisms of the Commission on Human Rights, during its fourteenth session the Working Group held two working meetings with the Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, Mr. P. Cumaraswamy, and with the Special Rapporteur on the elimination of all forms of religious intolerance and of discrimination based on religion or belief, Mr. A. Amor, in order to discuss questions of common interest.

2. Timely replies from Governments

50. The Group regrets the delay with which Governments often submit their replies to it. As already noted, only 25 per cent of Governments reply within the 90-day deadline. Far more serious is the fact that the replies are in many cases patently incomplete, and merely assert that there are no arbitrary detentions in the country in question because they are prohibited by the Constitution. This situation places the Group before a difficult choice: either it takes no decision, thereby failing to perform the mandate it has received from the Commission, or it takes a decision on the basis of the available information. The Commission will appreciate that the first choice is unacceptable, while the second could lead to errors. Faced with this dilemma, the Group has not hesitated to discharge its mandate. It is only when a detention is declared arbitrary that a Government reacts by providing the information it failed to submit when requested, and asks for the decision to be reconsidered.

51. In the circumstances, the Working Group has decided to change its methods of work in order to remedy any errors which might have been made. It has accepted to reconsider decisions under certain conditions, inter alia, if the Government or source invokes facts of which it was not aware when the case was considered by the Group (see annex I, para. 14.2).

3. Follow-up to recommendations

52. For three years the Working Group has concerned itself with the follow-up to its decisions, in response to the concerns of the Commission and out of its own interest in rendering its action more effective, and has even put forward a proposal to Governments. In last year's report it addressed this issue at length (E/CN.4/1995/31, paras. 32 to 37 and 56 (c)). However, since in his statement to the Commission and in his report (E/CN.4/1995/98, paras. 19, 48, 49 and 127-129) the High Commissioner for Human Rights has stated that the follow-up to the recommendations of thematic procedures is an essential part of his mandate, the Group hopes that it will be possible to establish an effective procedure to this effect at the next meeting of special rapporteurs and chairpersons of working groups.

4. Prevention

53. A number of recommendations made by the Group in its previous reports focused on preventing arbitrary detentions. In this respect, particular importance has been attached to the need for a correct description of punishable conduct, for domestic law to be in conformity with international instruments and for moderation in the use of states of constitutional emergency. In conformity with the Commission's mandate, the Group will pursue its efforts in these areas.

5. Annual meetings of special rapporteurs and chairpersons of working groups

54. The Group attaches great importance to these meetings, although it must place on record that it was only possible to hold the meeting in 1995 to the detriment of the Group's activities, on account of the lack of conference services and the fact that it was held at the same time as the Group's twelfth session. On behalf of the Working Group the Chairman proposed that the agenda for those meetings should include, in addition to essential questions of coordination, an analysis of substantive problems, such as the impact of terrorist groups on the enjoyment of human rights. The meeting should also address the problem of follow-up to recommendations, and to the "urgent appeals" by the various mechanisms.

55. It is also appropriate in this chapter to emphasize that the meetings enabled the Working Group effectively to coordinate with the Special Rapporteurs who had been invited to visit Colombia (see paras. 20 to 23) and with those with whom the Special Rapporteur on the situation of human rights in Cuba had conferred (paras. 31 to 34).

56. Resolution 1995/40 concerning the right to freedom of opinion and expression. In this resolution, as in resolution 1994/59, the Commission expresses its concern at the extensive occurrence of detention resulting from the exercise of the right to freedom of opinion and expression. Detentions of persons who exercise that right were one of the most typical and commonest types of detention which the Group found to be arbitrary under category II of its methods of work. The Group attaches special importance to this resolution, and continues to cooperate with the relevant thematic Rapporteur, to whom it sent 12 decisions in the course of the year (relating to 112 persons), which also came within his mandate.

57. Resolution 1995/79 concerning the rights of the child and resolution 1995/41 concerning human rights in the administration of justice, in particular of children and juveniles in detention. This topic is very closely related to the Group's mandate, and category III of arbitrary detentions consists of violations of due process of law, frequently attributable to shortcomings in the administration of justice. The Group only dealt occasionally with detentions of juveniles (decisions 13/1995 and 17/1995 concerning Peru and 20/1995 concerning Pakistan).

58. Resolution 1995/43 concerning human rights and terrorism. The Working Group endorses the condemnation contained in paragraph 1 of the Commission's resolution and joins in the call for Governments to take all necessary and effective measures to prevent, combat and eliminate terrorism, in accordance, as the resolution states, "with international standards of human rights". In any event, the Group wishes to reiterate the position expressed in its third and fourth reports, namely that deprivation of liberty by terrorist groups lies outside its mandate, and that special legislation adopted to combat terrorism is frequently employed to prevent the exercise of legitimate rights.

59. Resolution 1995/53 concerning advisory services and the Voluntary Fund for Technical Cooperation in the Field of Human Rights. A number of topics that may come within advisory services to Governments are connected with individual freedom: they include the whole sphere of the administration of justice, the prison system, rules of criminal procedure and substantive legislation (strict classification of offences, rules relating to minors, alternative penalties to deprivation of liberty, etc.), anti-terrorist legislation, provisions relating to states of emergency and many others. In addition, the Group's experience has led it to the conclusion that technical assistance should primarily benefit law enforcement officials, essentially the police and prison staff.

60. In any event, the Group emphasizes the view expressed in its 1994 report regarding the need to strengthen coordination between thematic and country mandates and the advisory services of the Centre for Human Rights, and with other services providing assistance in this field, whether through bilateral cooperation or outside the United Nations system.

61. Resolution 1995/57 concerning internally displaced persons and resolution 1995/88 concerning human rights and mass exoduses. The Group has received no communications relating to arbitrary detentions of displaced persons. However, it has been informed, by the reports of country special rapporteurs, that human rights violations result in displacements of persons. This has occurred, for example, in Rwanda (see E/CN.4/1996/7).

62. The Working Group has been particularly concerned about asylum seekers in foreign countries who are deprived of their liberty while their application is being processed, as in the case of Vietnamese exiles in Hong Kong and Haitian and Cuban refugees at the United States Naval base in Guantanamo.

63. In considering this question, the Group during its thirteenth session received representatives of a New York law office and of the Lawyers Committee for Human Rights and during its fourteenth session held a working meeting with representatives of the United Nations High Commissioner for Refugees (see, para. 70).

64. Resolution 1995/65 concerning human rights violations on the Papua New Guinea island of Bougainville. No cases of detention in this territory have been submitted to the Group.

65. Resolution 1995/66 concerning the situation of human rights in Cuba. Information on this topic contained in paragraphs 31 to 34 of this report concerning field missions and the decisions adopted by the Group in 1995 relating to Cuba.

66. Resolution 1995/75 concerning cooperation with representatives of United Nations human rights bodies. In connection with its finding that certain persons had been arbitrarily detained, the Working Group is studying the situation of lawyers who submitted the cases in question to the Group and who have allegedly been threatened in their respective countries.

67. Resolution 1995/80 concerning comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action. In discharging its duties, the Working Group has constantly borne in mind the Vienna Declaration and Programme of Action. The Declaration recognizes that arbitrary detentions constitute manifest and systematic violations of human rights. The Group's concern to take full account of the Vienna Declaration and Programme of Action is manifest in those paragraphs of this report devoted to the coordination of the activities of the various thematic and country mechanisms, as well as in its recommendations and conclusions.

68. Resolution 1995/85 concerning the elimination of violence against women. This resolution requests thematic special rapporteurs to cooperate with and assist the Special Rapporteur on violence against women. Although detentions of women have been reported to the Working Group, it is not aware of cases in which a person was deprived of liberty on account of being a woman. In any event, the Group is prepared to provide any cooperation and assistance requested by the Commission.

69. Resolution 1995/86 concerning the question of integrating the human rights of women into the human rights mechanism of the United Nations. For two years now, the Working Group has been presenting its statistics separately for men and women, a practice it has maintained in this report. The Group hopes that the agenda for the next meeting of special rapporteurs and chairpersons of working groups on improving cooperation and the exchange of information will address the issue of the human rights of women.

E. Cooperation with other United Nations bodies

70. As a number of cases of deprivation of liberty affecting asylum seekers in several regions of the world have been brought to its attention, at its fourteenth session in November 1995 the Group invited representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) to a working meeting on the problem. At the meeting legal advisers described the rules and principles applicable in the light of UNHCR's statutes and experience, to administrative detention of asylum seekers; regional officials of UNHCR described the situations faced by asylum seekers in the various parts of the world. The Working Group wishes to thank the representatives of UNHCR for their diligence and cooperativeness.

F. Cooperation with non-governmental organizations

71. During the past year, the Working Group has maintained its contacts with non-governmental organizations, which are one of the main sources of information available to it, in order to improve its working methods and make them more effective. At its fourteenth session the Group organized a working meeting with Amnesty International, at the latter's request, to discuss questions relating to the Group's methods of work.

II. DECISIONS ADOPTED BY THE WORKING GROUP AND THE FOLLOW-UP THERETO

A. General information regarding the decisions adopted by the Working Group

72. During the three sessions held in 1995 (its twelfth, thirteenth and fourteenth sessions), the Working Group adopted 49 decisions concerning 847 persons in 22 countries as well as in the territory controlled by the Palestinian Authority. Some details of the decisions adopted in 1995 appear in the following table and the complete text of decisions 1/1995 to 34/1995 may be found in addendum 1 to this report. Decisions 35/1995 to 49/1995 will be reproduced in the next compilation of the Group's decisions, to be published at a later date.

Decisions adopted during 1995 by the Working Group on Arbitrary Detention

Decision No.	Country	Government's reply	Person(s) concerned	Decision
1/1995	Republic of Korea	No	Lee Jang-hyong and Kim Sun-myung Ahn Jae-Ku and 8 others*	Arbitrary, Category III Arbitrary, Category II
2/1995	Democratic People's Republic of Korea	Yes	Shin Sook Ja and 2 daughters	Not detained - cases filed
3/1995	Uzbekistan	No	Salavat Umurzakov and 10 others*	Arbitrary, Category II
4/1995	Iraq	Yes	Mohammad Ahmad El-Khalili	Not Arbitrary
5/1995	Bangladesh	No	Toab Khan and Borhan Ahmed	Arbitrary, Category II
6/1995	Algeria	No	Ali Barka and 14 others*	Arbitrary, Category III
7/1995	Turkey	Yes	Gunay Aslan, Haluk Gerger and Sedat Aslantas	Arbitrary, Category II

Decision No.	Country	Government's reply	Person(s) concerned	Decision
8/1995	Cuba	yes	Joel Mesa Morales	Released - case filed
9/1995	Guatemala	yes	Arturo Federico Mendez Ortiz and Alfonso Morales Jimenez	Released - cases filed
10/1995	Peru	No	Cesar Flores Gonzalez	Arbitrary, Category II
11/1995	Cuba	No	Francisco Chaviano Gonzalez	Arbitrary, Category II
12/1995	Peru	Yes	Melquiades Calderon Ventocilla and Fresia Calderon	Released - case filed Pending for further information
13/1995	Peru	Yes	Alfredo Pablo Carillo Antayhua	Arbitrary, Category III
14/1995	Peru	No	Teodosia Cahuaya Flores	Released - case filed
15/1995	Colombia	Yes	Gerardo Bermudez Sanchez	Arbitrary, Category III
16/1995	Peru	Yes	Julio Cesar Allca Hito	Pending for further information
17/1995	Peru	Yes	Abad Aguilar Rivas and Edilberto Rivas Rojas	Arbitrary, Category III
18/1995	Indonesia	Yes	Jannes Hutahaen and 3 others*	Arbitrary, Category II
19/1995	Saudi Arabia	No	Fouad Dehlawi and 4 others*	Arbitrary, Category III
20/1995	Pakistan	Yes	Manzoor Masih and 2 others*	Released - cases filed

Decision No.	Country	Government's reply	Person(s) concerned	Decision
21/1995	Ecuador	No	Carmen Celina Bolanos and 10 others	Arbitrary, Category III
22/1995	Peru	No	J.A. Castiglione Mendoza	Pending for further information
23/1995	Peru	No	Maria Elena Foronda Faro and Oscar Diaz Barboza	Pending for further information
24/1995	Peru	No	A. Gargurevich Oliva	Pending for further information
25/1995	Peru	No	A.E. Irrazabal Cruzado	Pending for further information
26/1995	Peru	No	J.C. Lapa Campos	Pending for further information
27/1995	Peru	No	R. Mori Zavaleta and W. Cruz Mori	Pending for further information
28/1995	Palestinian Authority	No	Attiya Abu Mansur and 4 others*	Released - cases filed
29/1995	Democratic People's Republic of Korea	Yes	Kang Jung Sok and Ko Sang Mun	Pending for further information
30/1995	Libyan Arab Jamahiriya	No	Rashid el-Orfia	Arbitrary, Category II
31/1995	Zaire	No	Kalunga Akili Mali, Magara Deus and Nasser Hassan	Arbitrary, Category III
32/1995	Zaire	No	J.M. de Oliveira Yumba di Tchibuka	Pending for further information
			Adalbert Nkutuyisila and 3 others*	Arbitrary, Category III

Decision No.	Country	Government's reply	Person(s) concerned	Decision
33/1995	Turkey	No	Leyla Zana and 5 others*	Pending for further information
			Fikret Baskaya	Arbitrary, Category II
34/1995	Turkey	No	Selahettin Simsek	Arbitrary, Category III
35/1995	Bahrain	Yes	532 persons*	Arbitrary, Category III (513 persons) Released - cases filed (19 persons)
36/1995	Maldives	No	Mohammed Nasheed and Mohammed Shafeek	Arbitrary, Category II
37/1995	Democratic People's Republic of Korea		(same case as in decision 29/1995)	Not detained - cases filed
38/1995	Bahrain	Yes	Sheik Abdoul Amir al-Jamri and Malika Singais	Released - cases filed
39/1995	Ethiopia	Yes	Daniel Kifle	Released - case filed
40/1995		Turkey	(same case as in decision 33/1995)	Arbitrary, Category III
41/1995	Colombia	Yes	Oscar Eliecer Peña Navarro and 2 others*	Not Arbitrary
42/1995	Peru	No	Luis Rolo Huaman Morales and Julian Oscar Huaman Morales	Released - cases filed
			Pablo A. Huaman Morales and Mayela A. Huaman Morales	Pending for further information

Decision No.	Country	Government's reply	Person(s) concerned	Decision
43/1995	Peru	Yes	Alfredo Raymundo Chaves and 4 others*	Arbitrary, Category III
			Meves Mallqui Rodriguez	Released - case filed
44/1995	Peru	No	Maria Elena Foronda Faro and Oscar Diaz Barbosa	Released - cases filed
45/1995	Egypt	No	Hassan Gharbawi Shehata Farag and 5 others*	Arbitrary, Category I
			Mohammed Sayid L'eed Hassanien and 4 others*	Arbitrary, Category III
46/1995	China	Yes	79 persons*	Arbitrary, Category II (64 persons) Released - cases filed (11 persons) Not detained - cases filed (4 persons)
47/1995	China	No	James Dong Peng	Insufficient information - case filed
48/1995	Saudi Arabia	Yes	Sheik Salman bin Fahd al-Awda and 7 others*	Arbitrary, Category II
49/1995	Republic of Korea	Yes	Kim Sam-sok, Ki Seh-Moon and Lee Kyung-ryol	Arbitrary, Category II

* The complete list of the persons concerned is available for consultation at the secretariat of the Working Group.

73. As in the past, the decisions were adopted by the Working Group unanimously, with one exception (the case of Teodosia Cahuaya Flores, under decision 14/1995 (Peru)).

74. In accordance with its revised methods of work (annex I, paras. 2 and 14.1 (c)), the Working Group transmitted its decisions to the Governments concerned, drawing their attention to resolution 1995/59, by which, among other things, the Commission invited "Governments concerned to take note of the Working Group's decisions and, where necessary, to take appropriate steps and to inform the Working Group of the steps they have taken". Three weeks later, it also transmitted them to the source.

B. Governments' reactions to decisions

75. During the period under consideration, the Working Group received information from a number of Governments pursuant to the transmittal of decisions adopted by the Working Group with regard to cases reported to have occurred in their countries. The following Governments provided the Working Group with such information (the decision to which the information refers is given in parentheses): Azerbaijan (31/1993), China (43/1993, 44/1993, 53/1993, 63/1993, 65/1993 and 66/1993), Colombia (26/1994 and 15/1995), Cuba (46/1994, 47/1994 and 11/1995), Ecuador (21/1995), Ethiopia (55/1993), Indonesia (18/1995), Myanmar (13/1994), Republic of Korea (29/1994, 30/1994 and 1/1995), Democratic People's Republic of Korea (29/1995), Peru (41/1994, 42/1994, 43/1994, 44/1994, 45/1994, 17/1995 and 22/1995) and Turkey (38/1994 and 34/1995), as well as the Palestinian Authority (28/1995).

76. In some of the cases the Governments informed the Working Group that the person or persons concerned by the decision had been released. This was the case of Azerbaijan (with regard to Vilik Ilitch Oganessov and Artavaz Aramovitch Mirzoyan, decision 31/1993); Indonesia (Muchtar Pakpahan, decision 18/1995); China (Qi Dafeng, Zu Guoqiang and Mao Wenke, decision 44/1993; Wang Juntao and Chen Ziming, decision 63/1993; Yulu Dawa Tsering, decision 65/1993; Liu Guandong, Wang Yijun, Wei Jingyi, Zhang Youshen, Zhang Dapeng, Zhou Lunyou, Su Zhimin, Yang Libo, Xu Guoxing, Liu Qinglin, Zhang Weiming, Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma, Dawa Lhanzum and Hu Hai, decision 66/1993); and Myanmar (Dr. Aung Khin Sint and Tin Moe, decision 13/1994). The Chinese Government further informed the Working Group that, according to its investigations, Zang Jianjun and Zhao Chingjian (decision 44/1993) had not apparently been detained or subjected to any other form of punishment. The Government of the Democratic People's Republic of Korea informed the Working Group that the two persons concerned by decision 29/1995 had never been detained during their stay in that country.

77. As the Working Group has already noted in previous reports to the Commission, it considers that the release of persons whose detention it declared to be arbitrary should be seen as a positive response to its recommendations, particularly with regard to the norms and principles contained in the relevant international instruments. The Working Group again wishes to express its thanks to the above-mentioned Governments and, in accordance with the Commission's wish, to encourage the other Governments concerned to take similar measures.

78. Certain Governments (including the Chinese Government, regarding decisions 53/1994, 63/1993 and 65/1993; the Cuban Government, regarding decisions 46/1994, 47/1994 and 11/1995; and the Indonesian Government, concerning decision 18/1995) rejected the conclusions of the Working Group by which it declared the detention of the persons concerned to be arbitrary. The Indonesian Government stated that it could not "take the necessary steps to remedy the situation" in accordance with the Working Group's recommendation, as that would violate the national Constitution and be tantamount to interference with the principle of the independence of the judiciary, given that the persons concerned had been tried by an independent tribunal. Other Governments provided additional information on the cases which concerned them, explaining why they considered that the detentions in question were not arbitrary.

79. The Governments of the Republic of Korea and of Peru, which had not responded to the communications of the Working Group within the 90-day period (decisions 29/1994 and 1/1995 for the Republic of Korea, and 17/1995 and 22/1995 for Peru), provided the Working Group with detailed replies after they had been advised of the Working Group's decisions.

80. As several Governments or non-governmental organizations had requested that the Working Group be allowed to revise the decisions adopted (including the Governments of the Republic of Korea, on decision 1/1995, and of Colombia, regarding decision 15/1995, on which the Government provided the Working Group with additional information of which the Working Group had not been aware when it adopted its decision), in a spirit of cooperation, the Working Group decided at its fourteenth session to make the requested changes in its methods of work, but laying down conditions for accepting requests for revision, so as to consider the information before it at its fifteenth session.

81. Details of this procedure are set out in paragraph 14.2 (c) of the methods of work (see annex I).

III. OBSERVATIONS OF THE WORKING GROUP

82. At the fifty-first session, a number of delegations of Governments (Australia, Austria, Bhutan, Chile, China, Colombia, Cuba, Nepal, Peru, Republic of Korea and Switzerland), non-governmental organizations (Amnesty International, Andean Commission of Jurists, International Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), International Federation of Human Rights (FIDH), Human Rights Watch, International League for Human Rights, Robert Kennedy Memorial, Third World Movement against the Exploitation of Women) and observers (International Committee of the Red Cross (ICRC)) referred to the Working Group's mandate and to its report. The large majority approved the Working Group's work. However, two delegations - China and Cuba - questioned general aspects of the Working Group's work and of its report, as well as decisions declaring some detentions to be arbitrary, and stated that the Working Group had been guilty of "irregularities" and "excesses" (Cuba) and that its work was "harmful" (China), adding that the Working Group "had invented pretexts" for declaring detentions arbitrary.

General criticisms

83. The general aspects queried by the delegations of China and Cuba were:

(a) That the Working Group questioned internal legislation, which was outside its terms of reference;

(b) That the Working Group gave opinions on detentions after sentences had been handed down in accordance with internal law; and

(c) That the Working Group acted selectively.

84. With regard to criticisms (a) and (b), the Working Group's mandate was defined in resolution 1991/42, which created it for the purpose of "investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned".

85. It is worth pointing out that this mandate is unique, in the sense that it is the only mechanism established by the Commission which has been specifically assigned the task of "investigating cases" (resolution 1991/42), whereas all the other mechanisms are mandated to "report" on human rights violations related to given situations, themes or countries.

86. The specific nature of its mandate obliged the Working Group, at its first session, to reflect on its "mandate and legal framework" (Chap. I of its first report, E/CN.4/1992/20). Its deliberations are reflected in part in paragraph 10 of that report:

> "The legal framework within which the Working Group will have to carry out its mandate is made up primarily of international standards and legal instruments, but in certain instances of domestic legislation as well. The Working Group will thus have to look into domestic legislation in investigating individual cases, where it will have to determine whether internal law has been respected and, in the affirmative, whether this internal law conforms to international standards. It may thus have to consider, in certain cases, whether the alleged practice of arbitrary detention is not made possible as a result of laws which may be in contradiction with international standards."

87. It should also be noted that the "principles applicable for the consideration of cases submitted to the Working Group" (annex I of the first report) refer specifically to "post-trial situations".

88. The Commission on Human Rights, "noting the comments made during its forty-eighth session", expressed "its satisfaction to the Working Group on Arbitrary Detention at the diligence with which it has devised its methods of work", took note of the Working Group's report and thanked the experts "for the rigour with which they have discharged their task" (resolution 1992/28, adopted without a vote).

89. Although resolution 1991/42 refers to the Universal Declaration of Human Rights and international legal instruments - with which internal legislation must be brought into line - as parameters for determining whether a detention is arbitrary or not, the Government of Cuba criticized various aspects of the Working Group's work, which in essence meant that it was dissociating itself from the consensus by which resolutions 1991/42 and 1992/28 had been adopted. In a letter dated 24 December 1991, it asked the Working Group a number of questions which were analysed by the Working Group in its "deliberations" Nos. 02 and 03, adopted at its third and fourth sessions and described in its second report (E/CN.4/1993/24).

90. The main conclusions of those deliberations were:

> "... In the performance of its task, the Working Group takes into consideration not only the national standard but also the international standard, ensuring, where necessary, that the national standard conforms to the relevant international standard" (deliberation 02, para. 14);
>
> "The Working Group notes that neither the provisions of resolution 1991/42, which established its terms of reference, nor the discussion which led up to its adoption, as reflected in the summary records (E/CN.4/1991/SR.25-33), justify the view that such communications (transmitting reports of arbitrary detention) should be declared inadmissible on the grounds that there has been a conviction (deliberation 03,A)."

91. In taking note of this report, in its resolution 1993/36 the Commission expressed its appreciation to the Working Group on Arbitrary Detention for the way in which it carried out its task, took note "with satisfaction of the Working Group's report and thanked the Experts for the rigour with which they had performed their task, in the light of the very specific nature of their mandate of investigating cases, and took note of the 'deliberations' adopted by the Working Group on issues of a general nature with a view to achieving better prevention and to facilitating the consideration of future cases, as well as helping to further strengthen the impartiality of its work. This resolution was also adopted without a vote. In following years, the Commission, in each of its resolutions concerning the Working Group, took note of the Working Group's 'deliberations'".

92. From the above, it is clear that the Commission has endorsed the Working Group's criteria regarding the two aspects covered by these comments, namely:

(a) That the Working Group may consider cases of arbitrary detention, whether pre-trial, in-trial or post-trial; and

(b) That the Working Group must consider the internal legislation of a country and its consistency with the standards of international instruments in deciding whether a detention is arbitrary or not.

93. With regard to criticism (c) (para. 83), alleging that the Working Group works selectively, to the detriment of the developing countries, and does not consider arbitrary detention in Europe or the United States, in the five years since its creation the Working Group has been guided by the Commission's

resolutions, all of which subsequent to the Working Group's creation have stressed two key concepts: (a) that the Working Group should continue to seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned (para. 3 of resolutions 1992/28, 1993/36, 1994/32 and 1995/59); and (b) that the Working Group should act with objectivity and independence (para. 4 of resolutions 1992/28, 1994/32 and 1995/59; para. 5 of resolution 1993/36).

94. According to paragraph 4 of resolution 1993/36, the Working Group may act on its own initiative. In fact, at all the meetings it has held with non-governmental organizations, it has encouraged them to submit communications concerning all areas of the world. In practice, however, none has been received.

95. If the Governments of China and Cuba feel that the Working Group has acted selectively, the way is open for them to fill in the gaps, as those called on first to provide information to the Working Group are Governments, in accordance with all the resolutions concerning the Working Group's mandate.

96. The Working Group is more concerned than anyone about this situation and has already referred to it in its second report (E/CN.4/1993/24, para. 28). Moreover, following a statement by the representative of Cuba at the fifty-first session of the Commission, alleging that the Working Group had not said anything about cases of Cuban citizens detained in the United States, the Chairman of the Working Group, in letters dated 3 March and 20 September 1995, asked the Ambassador of Cuba to the United Nations Office at Geneva to provide a list of persons in that situation. At the date of this report, no reply has been received.

97. Once again, and in conformity with Commission on Human Rights resolution 1991/42, the Working Group urges Governments, intergovernmental and non-governmental organizations to provide it with reliable information on detentions in any region of the world.

98. The Government of Cuba's fourth criticism of the Working Group is that it has assumed a coordinating role with other mechanisms of the Commission. The Working Group cannot hide its surprise at being reproached for making suggestions in an area accorded the utmost importance by the World Conference on Human Rights. Furthermore, in its resolution 1994/53 on human rights and thematic procedures, the Commission on Human Rights, among other things, encouraged the special rapporteurs and working groups to "make recommendations for the avoidance of human rights violations". Its resolution 1993/36 welcomed "the importance that the Working Group attaches to coordination with other mechanisms of the Commission as well as with treaty-monitoring bodies" and invited it "to take a position in its next report on the issue of the admissibility of cases submitted to the Working Group when they are under consideration by other bodies". This criticism is as unexpected as it is surprising, given that the last part was added precisely on the proposal of the Cuban Government at the forty-ninth session of the Commission. In paragraphs 64-70 of its report (E/CN.4/1994/27), the Working Group did as the Commission asked.

99. In the following report, which is the target of the criticism, the Working Group, encouraged by the Commission's support, and in the spirit of the Vienna Declaration and Programme of Action, made other coordination proposals which it deemed necessary for cases where more than one body might be interested in visiting the same country or when a special rapporteur had been appointed for that country. The intention was not to transform it into a "working group on arbitrary recommendations" or to have its recommendations become "holy writ", as has been suggested.

Specific criticisms concerning decisions

100. The Government of China criticizes the Working Group's decisions concerning that country on grounds which the Working Group finds difficult to understand.

101. The Government of China maintains that the detentions referred to in decisions 43/1993 and 44/1993 were declared arbitrary "simply because the Government did not reply within 90 days". Although it is true that the Government failed to reply to the Working Group's request, the detentions were declared arbitrary not for that reason, but because the individuals in question had been arrested "without a warrant and for their work in the autonomous workers' movement in Tianjin" (decision 43/1993); and because "the five persons detained were arrested without a warrant and continue to be in detention without charge and without bringing them to trial"; furthermore, in only one case is the place of detention known, and none of the detainees has access to their families or to a lawyer (decision 44/1993). In both cases, the detention is arbitrary under categories II and III.

102. The Working Group has already had the occasion to counter these criticisms in its 1994 report (E/CN.4/1994/27, para. 55 (b)). In any event, the Government had been given the opportunity to contest the facts related by the source.

103. Decision 53/1993 is criticized on the grounds that the Government reply was allegedly not taken into account and that the reason for finding the detention arbitrary was that it was "based solely on the grounds that [the individual in question] ... listened to the Voice of America". The truth is that the Government reply suffered from a "complete absence of details in respect of [the] ... trial". The grounds for the detention were not only those indicated by the Government, but also that the person concerned had distributed leaflets, met with student leaders and called for student strikes, all of which represent the legitimate exercise of the rights recognized in international human rights instruments, but which are punishable under Chinese law. Consequently, the Working Group considered the detention arbitrary and as falling within category II of its methods of work.

104. Decision 63/1993 is criticized by China on the grounds that the Working Group declared the detention arbitrary without reason; in reality, the decision was based on the following: Wang Juntao and Chan Zhimin were held incommunicado for four months and were convicted of actions that constitute the exercise of political rights; as the Chinese Government informed the

Working Group, "they cobbled together an anti-government coalition of illegal organization and engaged in a series of anti-government activities in Beijing".

105. The Cuban Government, for its part, criticizes decision 47/1994 - without referring to it specifically - and suggests that "the Working Group appears to condone and sanction crimes of this kind" (international drug trafficking and endangering national security and the security of neighbouring countries). It also states that the trial was held openly and with full guarantees. In fact, the Working Group considered the detention arbitrary because the accused was tried by a special court, as recognized in the Government report, constituted under a wartime procedure (although the country was not at war), and the trial proceedings, which involved a large number of persons accused of very serious offences, were of a summary nature.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

1. On the causes of arbitrary detentions

106. In its previous reports, the Working Group noted that, in its experience, the main causes of arbitrary detentions were the exercise of the powers pertaining to states of emergency, the lack of proportionality between the alleged emergency and decisions of the authorities, the vague description of the acts to be punished and the existence of special or emergency courts.

107. The Working Group also noted that one of the most serious causes of arbitrary detention is the existence of special courts, military or otherwise, regardless of what they are called. Even if such courts are not in themselves prohibited by the International Covenant on Civil and Political Rights, the Working Group has none the less found by experience that virtually none of them respects the guarantees of the right to a fair trial enshrined in the Universal Declaration of Human Rights and the said Covenant.

108. The situation is further aggravated by the fact that in many countries courts do not enjoy the necessary independence. The reports of special rapporteurs on the human rights situations in specific countries submitted at the fifty-first session corroborate this by pointing out that, in the countries in question, courts are not independent, act partially and do not apply the rules of due process of law, all of which is translated into impunity for violations of human rights and arbitrary detentions.

109. Other causes of arbitrary detentions have been mentioned by other special rapporteurs:

(a) The Special Rapporteur on the situation of human rights in Rwanda mentions as a reason for arbitrary detentions not only the slanderous accusations motivated by the situation prevailing in that country, but also the illegal practice of prosecutors issuing blank warrants (E/CN.4/1996/7, para. 68). Equally alarming is the fact that most of the 42,000 detainees are

being held without charges or indictment, due to a defective, if not non-existent, judicial machinery. For example, out of 708 judges, only 210 remain, of whom only 55 are trained jurists (ibid., paras. 91 ff.);

(b) The Special Rapporteur on the situation of human rights in Zaire attributes the practice of arbitrary detentions in that country to the anarchy in the powers of the security services, which are all authorized de jure or de facto to carry out arrests (E/CN.4/1995/67, para. 184);

(c) The Special Rapporteur on the independence and impartiality of the judiciary also refers to this question in his report (E/CN.4/1995/39, paras. 38 ff.).

110. Arbitrary detentions could be reduced if the "effective remedy" referred to in article 8 of the Universal Declaration and article 9, paragraph 4, of the International Covenant on Civil and Political Rights were a reality in all countries, both in law and in fact. Unfortunately, many legal systems make no provision for it and, in many other cases, attorneys - in addition to being frequently persecuted in many countries - do not avail themselves of such remedy, or if they do, the courts do not show the proper zeal.

111. As the Commission on Human Rights is aware, whenever the Working Group decides that a detention is arbitrary, it requests Governments "to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights".

112. While some Governments take the suggested steps, for instance by releasing the persons concerned, they all too often fail to take the recommended follow-up action.

113. In order to draw the Commission's attention to the harmful effects this can have, the Working Group would like to submit the list of persons who, although they have been in detention for many years, in fact over six (according to information available to the Working Group on 1 December 1995, and in the absence of any report by the Government concerned or by the source concerning their release or any other change in their status), continue to be deprived of their liberty, despite the fact that the Working Group has declared their detention arbitrary under categories I and II of the Principles applicable to the consideration of cases submitted to the Working Group.

Country	Decision No.	Name	Detained since
Libyan Arab Jamahiriya	3/1992	Al-Ajili Muhammad al-Azhari	April 1973
		Ali Muhammad al-Akrami	April 1973
		Ali Muhammad al-Qajiji	April 1973
		Salih Omar al-Qasbi	April 1973
		Muhammad al-Sadiq al-Tarhouni	April 1973
	24/1993	Rashid A.H. al-Urfia	Feb./1982
Myanmar	52/1992	Nay Min (alias Win Shwe)	Oct./1988
	38/1993	Min Zeya	Aug./1989
	38/1993	Ye Htoon	July 1989
	62/1993	U Tin Oo	Dec./1989
Syrian Arab Republic	6/1992	Riad al Turk	Oct./1980
	53/1992	Khalil Brayez	Nov./1970
	11/1993	Muhammad Munir Missouti	May 1987
	11/1993	Abdullah Quabbara	May 1987
	11/1993	Nash' At Tuma	Feb./1989
Republic of Korea	28/1993	Hwang Tae Kwon	June 1985
		Kim Song Man	June 1985
China	53/1993	Chen Lantao	June 1989
	65/1993	Jampa Ngodrup	Oct 1989
		Lhundrup Ganden	March 1988
		Lobsang Choejor	March 1988
		Lobsang Yeshe	March 1988
		Lobsang Palden	March 1988
		Drakpa Tsultrim	March 1988
		Lobsang Tashi	March 1988
		Tempa Wangdrak	March 1988
		Tenzin Tsultrim	March 1988
		Ngawang Phulchung	Nov./1989
		Ngawang Oser	Nov./1989
		Jamphel Changchub	Nov./1989
		Kelsang Thutob	Nov./1989
		Ngawang Gyaltsen	Nov./1989
		Jampal Lobsang	Nov./1989
		Ngawang Rigzin	Nov./1989
		Jampal Monlam	Nov./1989
		Jampel Tsering	Nov./1989
		Ngawang Kunga	Nov./1989
		Yulu Dawa Tsering	Dec./1987
		Ngawang Chamtsul	March 1989
		Tsering Ngodup	March 1989

114. The Working Group otherwise welcomes the release of Aung San Suu Kyi, which had been called for in its report for 1993.

2. Concerning the Working Group's activities

115. Once again the Working Group deplores the lack of cooperation on the part of Governments. Out of 37 communications transmitted (concerning 829 persons), it received information within 90 days only in 11 cases (578 persons) and beyond the 90-day limit in 4 cases (6 persons), which represents 40 per cent.

116. The Working Group is bound to point out that the failure to provide a full and timely reply cannot prevent it from discharging its mandate, since it will have to decide on the basis of the information available to it, in accordance with the methods of work approved by the Commission.

117. With regard to the follow-up to its decisions and recommendations, the Group refers to its comments in paragraph 52 above.

118. The Group is still anxious to carry out a joint study with the Special Rapporteur on the independence of judges and lawyers regarding the existence of "faceless", that is to say, anonymous judges, a phenomenon made necessary in some countries in order to protect the lives and safety, and thus the independence of magistrates, but which in many instances has led to a loss of judicial guarantees.

3. Regarding the situation in Rwanda

119. The Working Group expresses grave concern regarding the situation in Rwanda, in particular the presence of over 50,000 persons in the country's detention centres. The Group notes that most of these detentions are of an arbitrary nature. It notes further, however, that they are the result not so much of the penal legislation in force as of the lack of judicial authorities to apply such legislation. For this reason, the Group endorses appeals for the international community to help Rwanda to restore effective justice as soon as possible in order to put an end to the situation.

4. Regarding the situation in Nigeria

120. In the course of the year, the Working Group was particularly concerned by the situation of persons deprived of liberty in Nigeria in conditions which might imply arbitrary detentions.

121. During the year, it sent four urgent communications concerning 16 persons to the Government of Nigeria. Some of these communications referred among others to Ken Saro Wiva, Dr. Beko Ransome-Kuti and retired General Olusegun Obasanjo.

122. In addition, the High Commissioner for Human Rights requested that the Chairman of the Working Group or a Group member should undertake a mission to Nigeria with a view to obtaining information concerning the situation of

detained persons in danger of incurring the death penalty. Although the Group of course immediately agreed to undertake the mission, the Government unfortunately never gave its consent, despite many requests.

123. The Group is at present considering 26 cases of detention denounced as arbitrary, which are awaiting a reply from the Government, and it will continue to be attentive to any information which may allow it to reach its decisions.

B. Recommendations

124. In the light of its four years of experience, the Working Group wishes to make the following recommendations to the Commission on Human Rights:

1. With regard to its mandate, the Working Group stresses the need for reports which Governments are requested to provide to be delivered to it within the stipulated period of 90 days, containing full and detailed information, with regard to both the facts and the law.

2. The Working Group once again requests that the Commission should recommend that Governments maintaining declared states of emergency, particularly where such states are of long standing, should lift them and restore the normal rule of law, and in cases where the state of emergency is justified, should strictly apply the principle of proportionality and limitation in time, considering the frequency with which arbitrary detentions occur in such conditions.

3. The Working Group also suggests that the Commission should request that Governments eliminate from their legislation precepts which sanction modes of conduct without describing them with sufficient clarity. Individuals must understand clearly which conduct is lawful and which is not, without any possible room for doubt.

4. The Working Group suggests that the Commission should ask States to incorporate the remedy of habeas corpus in their legislation, as an individual right, which has been shown capable of ending arbitrary detention, or at least preventing its harmful consequences.

5. Once again, the Working Group asks the Commission to recommend that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should transmit the declaration on habeas corpus which is currently being drafted as soon as it has been approved.

6. The Group also suggests that the Commission should renew the mandate of a rapporteur for the Sub-Commission on the question of states of emergency, suggesting that the rapporteur's report should identify for each country the harmful effects of states of emergency on institutions and the rights likely to be affected by such regimes.

7. The Group proposes that the advisory services should assume responsibility for the matters referred to in paragraph 59 of this report.

Annex I

REVISED METHODS OF WORK

1. The methods of work take due account of the specific features of the terms of reference of the Working Group on Arbitrary Detention under Commission on Human Rights resolution 1991/42, whereby it has the duty of informing the Commission by means of a comprehensive report (para. 5), and also of "investigating cases" (para. 2).

2. The Group takes the view that such investigation should be of an adversarial nature so as to assist it in obtaining the cooperation of the State concerned.

3. In the opinion of the Working Group, situations of arbitrary detention, in the sense of paragraph 2 of resolution 1991/42, are those described in accordance with the principles set out in annex I of document E/CN.4/1992/20.

4. In the light of resolution 1991/42, the Working Group shall deem admissible communications received from the concerned individuals themselves or their families. Such communications may also be transmitted to the Working Group by representatives of the above-mentioned individuals as well as by Governments and intergovernmental and non-governmental organizations.

5. The communications must be submitted in writing and addressed to the secretariat giving the family name, first name and address of the sender, and (optionally) his telephone, telex and telefax numbers.

6. As far as possible, each case shall form the subject of a presentation indicating family name, first name and any other information making it possible to identify the person detained and all elements clarifying the legal status of the person concerned, particularly:

(a) The date and place of the arrest or detention and the forces presumed to have carried them out, together with all other information shedding light on the circumstances in which the person was arrested or detained;

(b) The reasons given by the authorities for the arrest or detention;

(c) The relevant legislation applied to the case in point;

(d) The internal steps taken, including domestic remedies, especially approaches to the administrative and legal authorities, particularly for verification of the detention and, as appropriate, their results or the reasons why such steps were ineffective or were not taken; and

(e) A short account of the reasons why the deprivation of liberty is regarded as arbitrary.

7. In order to facilitate the Group's work, it is hoped that communications will be submitted taking into account the model questionnaire.

8. Failure to comply with all formalities set forth in paragraphs 6 and 7 shall not directly or indirectly result in the inadmissibility of the communication.

9. The cases notified shall be brought to the attention of the Government concerned by the Chairman of the Group or, if he is not available, by the Vice-Chairman, by means of a letter transmitted through the Permanent Representative to the United Nations asking the Government to reply after having carried out the appropriate inquiries so as to provide the Group with the fullest possible information.

10. The communication shall be transmitted with an indication of the deadline established for receipt of a reply. The deadline may not exceed 90 days. If the reply has not been received by the time the deadline is reached, the Working Group may, on the basis of all data compiled, take a decision.

11. The procedure known as "urgent action" may be resorted to:

(a) In cases in which there are sufficiently reliable allegations that a person is being detained arbitrarily and that the continuation of the detention constitutes a serious danger to that person's health or even life. In such cases, between the sessions of the Working Group, the Working Group authorizes its Chairman or, in his absence, the Vice-Chairman, to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned, stating that this urgent action in no way prejudges the Working Group's final assessment of whether the detention is arbitrary or not;

(b) In other cases, where the detention may not constitute a danger to a person's health or life, but where the particular circumstances of the situation warrant urgent action. In such cases, between the sessions of the Working Group, the Chairman or the Vice-Chairman, in consultation with two other members of the Working Group, may also decide to transmit the communication by the most rapid means to the Minister for Foreign Affairs of the country concerned.

However, during sessions, it devolves on the Working Group to take a decision whether to resort to the urgent action procedure.

12. Between the sessions of the Working Group, the Chairman may, either personally or by delegating any of the members of the Group, request an interview with the Permanent Representative to the United Nations of the country in question in order to facilitate mutual cooperation.

13. Any information supplied by the Government concerned on specific cases shall be transmitted to the sources from which the communications were received, with a request for comments on the subject or additional information.

14.1 In the light of the information examined during its investigation, the Working Group may take one of the following decisions:

(a) If the person has been released, for whatever reason, since the Working Group took up the case, it shall decide in principle to file the case; it reserves the right, however, to decide on a case-by-case basis whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group considers that the case is not one of arbitrary detention, it shall so decide;

(c) If the Working Group considers that further information is required from the Government or source, it may decide to keep the case pending until that information is received;

(d) If the Working Group considers that it is unable to obtain enough information on the case, it shall decide to file the case ;

(e) If the Working Group decides that the arbitrary nature of the detention is established, it shall so decide and make recommendations to the Government concerned. The decisions and recommendations shall also be transmitted three weeks after their transmittal to the Government to the source from which the case was originally received, and be brought to the attention of the Commission on Human Rights in the annual report of the Working Group to the Commission.

14.2 Very exceptionally, the Group may, at the request of the Government concerned or the source, reconsider its decisions on the following conditions:

(a) If the facts on which the request is based are considered by the Group to be entirely new and such as to have caused the Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In a case where the request comes from a Government, on condition that the latter has replied within 90 days as stipulated in paragraph 10 above.

15. When the case under consideration concerns a country of which one of the members of the Working Group is a national, that member shall not participate in the discussion owing to the possibility of a conflict of interest.

16. The Working Group shall not deal with situations of international armed conflict, in so far as they are covered by the Geneva Conventions of 12 August 1949 and their Additional Protocols, particularly when the International Committee of the Red Cross (ICRC) has competence.

17. In accordance with the provisions of paragraph 4 of resolution 1993/36, the Working Group may, on its own initiative, take up cases which, in the opinion of any one of its members, might constitute arbitrary detention. If the Working Group is in session, the decision to communicate the case to the Government concerned shall be taken at that session. Outside the session, the Chairman, or in his absence the Vice-Chairman, may decide on transmittal of the case to the Government, provided at least three members of the Working Group so agree. When acting on its own initiative, the Working Group shall give preferential consideration to the thematic or geographical subjects to which the Commission on Human Rights has requested it to pay special attention.

18. The Working Group shall also communicate any decision it adopts to the Commission on Human Rights, whether thematic or country-oriented, or to the body set up by an appropriate treaty for the purpose of proper coordination between all organs of the system.

Annex II

STATISTICS

(Covering the period from January to December 1995. The figures given in parentheses are the corresponding figures from last year's report.)

I. CASES OF DETENTION IN WHICH THE WORKING GROUP ADOPTED A DECISION REGARDING THEIR ARBITRARY OR NOT ARBITRARY CHARACTER

A. Cases of detention declared arbitrary

	Female	Male	Total
1. Cases of detention declared arbitrary falling within category I	(-)	7(-)	7(-)
2. Cases of detention declared arbitrary falling within category II (including nine cases of persons (male) who were released)	23(1)	89(29)	112(30)
3. Cases of detention declared arbitrary falling within category III (including four cases of persons (male) who were released)	4(-)	574(19)	578(19)
4. Cases of detention declared arbitrary falling within categories II and III	(-)	(3)	(3)
Total number of cases of detention declared arbitrary	27(1)	670(51)	697(52)

B. Cases of detention declared not arbitrary

Female	Male	Total
(-)	4(6)	4(6)

II. CASES WHICH THE WORKING GROUP DECIDED TO FILE

	Female	Male	Total
A. Cases filed because the person was released, or was not detained	9(1)	50(24)	59(25)
B. Cases filed because of insufficient information	(-)	1(-)	1(-)

III. CASES PENDING

	Female	Male	Total
A. Cases which the Working Group decided to keep pending for further information	2(4)	8(25)	10(29)
B. Cases transmitted to Governments on which the Working Group has not yet taken a decision	23(38)	208(177)	231(215)
Total number of cases dealt with by the Working Group during the period January to December 1995	61(45)	941(334)	1002(379)